

Any illegal U.S. role in contra aid is hard to prove under existing laws

By Aaron Epstein
and Alfonso Chardy
Inquirer Washington Bureau

WASHINGTON — A few weeks after Congress barred U.S. assistance to the Nicaraguan rebels in 1984, Lt. Col. Oliver North picked up the telephone in his National Security Council office and reportedly arranged for a planeload of weapons to reach the insurgents in Central America.

Last month, when military aid to the rebels was still barred, the Nicaraguan government shot down an arms-laden cargo plane that had been dispatched from a Salvadoran air base by a shadowy anti-Sandinista network overseen by senior U.S. officials.

These and other incidents are contributing to a perception by some that Reagan administration officials and private American citizens may have violated U.S. laws before military aid to the contra rebels again became lawful last month.

Critics of President Reagan's policies, such as Sen. John Kerry (D., Mass.), a member of the Senate Foreign Relations Committee who has been tracking alleged violations for almost a year, contend that U.S. officials and private citizens have violated U.S. laws.

But legal analyses by the State and Justice Departments, congressional aides who monitor contra affairs or wrote some of the contra aid restrictions, and legal experts in and out of government suggest that the laws are too weak and the available facts too murky to make a solid case against U.S. government officials for their involvement with the Nicaraguan rebels.

State and Justice Department documents interpret the laws narrowly and suggest that some do not apply to government leaders or that their scope is too broad to cover certain activities. Alfred Rubin, professor of international law at Tufts University, who has followed North's activities, suggested that the officer's involvement may have been legal.

"Precisely what has he done?" Rubin asked. "He hasn't got the authority to authorize the export of anything, and so far as I know, he hasn't. What he's done is offer advice to others. I do that all the time, in columns and newspaper articles."

In examining whether administration officials or private citizens acted illegally, critics of U.S. policies focus on three laws:

- The Boland Amendment, which barred all direct or indirect U.S. government spending to assist the Nicaraguan rebels from Oct. 12, 1984, to Oct. 18, 1986, except for \$27 million in "humanitarian" aid and "intelligence-sharing" during in the 1985-86 period.

- The Neutrality Act, which makes it illegal to provide support for military expeditions against nations with whom the United States is at peace. The maximum penalty for violators is a \$3,000 fine and three years in prison.

- The Arms Export Control Act, which requires private citizens to obtain a license to export weapons. All U.S. arms sales to the contras were illegal for two years ending last month. The maximum penalty for each violation is a \$1 million fine and 10 years' imprisonment.

Legal experts say that none of these laws is an effective deterrent to administration officials who seek to aid the rebels.

The reasons: The Boland Amendment provides no penalties; the Arms Export Control Act applies only to private persons, and widespread doubt that the Neutrality Act applies to authorized acts of government officials — even though the language of the statute appears to apply to anyone.

Take the activities of North, for example.

North, deputy director of the National Security Council's office of political development and political-military affairs, was the central coordinator of the contras' support network while the congressional ban on military assistance was in effect, according to administration officials

and rebel sources.

With the approval of President Reagan and CIA director William J. Casey, these sources said, North reportedly helped the rebels find sources of money and weapons.

However, a rebel source who has dealt extensively with North said that he often went beyond being a mere adviser and, on occasion, actually arranged for the delivery of weapons.

Once, he said, North personally arranged for the repair and safe arrival of a weapons-laden plane at its Central American destination.

On the surface, North's intervention appeared to have violated the Boland Amendment. North apparently spent government money "which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual" — to quote the amendment.

However, proving guilt would be a difficult, if not impossible, task. The source of the information, who asked not to be identified, will not testify. It is not known exactly what North said or did. North is not known to have personally authorized any expenditures on behalf of the rebels. North typically acted through intermediaries. He has declined repeated requests for interviews.

And even if his culpability could be demonstrated, there is no legal penalty.

A congressional aide who helped draft the Boland Amendment said that although violations of that law lacked a criminal penalty, they did carry a political risk.

"Embarrassment can be a deterrent, especially when the administration has to come to Congress to ask for more money to aid the contras," he said.

Continued

2

Critics of the administration's Nicaragua policies also cite evidence arising from the capture of former CIA cargo handler Eugene Hasenfus, 45, after an arms-carrying cargo plane in which he was traveling was shot down Oct. 5.

Hasenfus' subsequent statements have exposed new details about the U.S.-supervised contra support network — such as the discovery of a virtual command center for the delivery of weapons to the contras at the partly U.S.-financed and monitored Ilopango air base in El Salvador, and the evidence that contra suppliers living in that country made frequent calls to North's office, to arms merchants with Pentagon connections and to retired Pentagon officers.

So far, however, participants have been careful to avoid direct U.S. government spending in violation of the Boland Amendment.

For example, the aircraft supplying the contras have been refueled at Ilopango with gasoline purchased for El Salvador by the U.S. government. Hasenfus said that the contra net-

work paid the Salvadorans for the fuel it used with private money, although some Salvadoran officers insist that gasoline was furnished to the contras without charge.

Even if the Neutrality Act were to be applied to government officials, which is questionable, there are other problems in enforcing it. A Justice Department analysis concluded that the law did not bar private support of military raids that have been organized outside the United States. That appears to have been the case in the Hasenfus affair.

"In order to establish a violation, it would be necessary to adduce evidence that donations to an organization have been used to support military expeditions organized in, and launched from, the United States," the analysis said.

Because the Justice Department is unlikely to investigate administration officials, House Democrats have asked Attorney General Edwin Meese 3d to seek the appointment of an independent prosecutor. He is expected to refuse their request, but a recent court ruling allows the Democrats to file a lawsuit to force Meese to act.